STATE OF UTAH, DEPARTMENT OF NATURAL RESOURCES

IBLA 78-561 Decided November 15, 1978

Appeal from decision of the Utah State Office, Bureau of Land Management, rejecting Miner's Hospital Grant Application U 40381.

Set aside and remanded.

1. Administrative Procedure: Generally--Mineral Lands: Nonmineral Entries--State Grants--State Selection

   A Bureau of Land Management decision rejecting a selection application by the State of Utah under its Miner's Hospital Grant because the land is deemed mineral in character due to a classification as valuable for oil, gas, and coal will be set aside because it failed to consider relevant statutes and regulations permitting selections of land valuable for minerals leasable under the Mineral Leasing Acts with a reservation of the minerals to the United States.

2. Administrative Procedure: Generally--Mineral Lands: Nonmineral Entries--State Selection

   A State selection application for lands valuable for leasable minerals may be rejected where it is determined that the disposal of the surface rights will unreasonably interfere with current or contemplated operations under the Mineral Leasing Acts and there is a proper basis in the record for such a determination which is unrefuted by the applicant. However, if there is no substantiation in the record for the determination and a State asserts error, the case will be remanded to the Bureau of Land Management to reconsider the determination, with the Geological Survey, and substantiate the basis of any future determination.

APPEARANCES: Paul E. Reimann, Assistant Attorney General, State of Utah, Salt Lake City, Utah, for appellant.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

By decision of July 7, 1978, the Utah State Office, Bureau of Land Management (BLM), rejected application U-40381 (List No. 120) by the State of Utah selecting 80 acres of public lands in Sevier County, Utah, pursuant to the Miner's Hospital Grant Act of February 20, 1929, 45 Stat. 1252. The Act permits selection by the State of "vacant, nonmineral, surveyed and unreserved public lands" for hospitals for disabled miners. The reason for the rejection was that the selected land "is deemed mineral in character and thus unavailable for disposition." In reaching this conclusion, the State Office referred to a determination by the U.S. Geological Survey that the lands are valuable for oil and gas and coal, and also that the exercise of surface rights would interfere unreasonably with the development of the coal.

Appellant has submitted extensive arguments to support its position that the BLM erred in this case. Basically, it contends that the decision either misconstrued the grant or ignores other legislation which would permit the selection of lands classified for oil, gas and coal, with a reservation of such minerals to the United States. Also, it contends the decision was made without BLM ascertaining whether the State would waive any right to such minerals, or affording it an opportunity to show that the exercise of surface rights would not interfere unreasonably with the development of coal. On the latter point, it asserts that the case file of coal lease U-0101218 covering the land does not support any possibility of a surface operation for the coal or otherwise show any reason why surface rights could unreasonably interfere with the development of the coal under the lease.

[1] We agree that the State's application should be reexamined in light of additional applicable statutes. BLM did not consider the impact of such statutes upon the Miner's Hospital Grant Act. That Act provided for additional acreage to that authorized for miners' hospitals by section 12 of the Utah Enabling Act of July 16, 1894, 28 Stat. 110, "subject to all the conditions and limitations of the original grant."

Although the grants are applicable only to nonmineral lands, legislation subsequent to the Utah Enabling Act permitted States to select lands valuable for certain minerals. Thus, the Act of April 30, 1912, 30 U.S.C. § 90 (1976), permits the selection of unreserved public lands which have been withdrawn or classified as coal lands or are valuable for coal, with a reservation to the United States of the coal in selected lands and of the right to prospect for, mine, and remove the coal in accordance with the conditions and limitations of the Act of June 22, 1910, 30 U.S.C.
§§ 83-85 (1976). Among other matters, the 1910 Act permits an applicant to attempt to disprove the

classification of the lands as coal lands and, if successful, to obtain a patent without the reservation of coal. Similar provisions as to lands withdrawn, classified, or reported as valuable for oil and gas and certain other minerals are provided by the Act of July 17, 1914, 30 U.S.C.
§§ 121-123 (1976). Regulation 43 CFR 2093.3-1(b) expressly indicates that the Act is interpreted as covering a State. Deposits of oil and gas and coal, as well as some additional minerals, in public lands or reserved to the United States, became leasable under the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 181 et seq. (1976). Section 29 of the 1920 Act, 30 U.S.C. § 186 (1976), provides in part:

> The Secretary of the Interior, in his discretion, in making any lease under this chapter, may reserve to the United States the right to lease, sell, or otherwise dispose of the surface of the lands embraced within such lease under existing laws or laws hereafter enacted, insofar as said surface is not necessary for use of the lessee in extracting and removing the deposits therein.

The primary regulations implementing these regulations to permit surface disposal of lands valuable or prospectively valuable for the minerals now leasable under the Mineral Leasing Act of 1920 are set forth in 43 CFR Subpart 2093. Provisions in §§ 2093.2-1 through 2093.3-3 set forth the procedures whereby a selection applicant, among others, may attempt to disprove mineral classifications or elect to receive a patent with a mineral reservation.

A more specific regulation, 43 CFR 2622.0-8, pertaining to quantity or special State grants notes that such grants are generally made from nonmineral land, but indicates that if the lands are otherwise available for selection, "the States may select lands which are withdrawn, classified, or reported as valuable for coal * * *, oil, gas * * * provided that the appropriate minerals are reserved to the United States in accordance with and subject to the regulations in Subpart 2093." The Miner's Hospital Grant Act is a quantity or special State grant within the meaning of this regulation. To the extent the decision below failed to consider the relevant statutes and regulations cited above and concluded that the application must be rejected because the land is mineral in character and unavailable for disposition, it is in error and must be set aside. Where lands are withdrawn, classified, or reported as valuable for leasable minerals, this fact alone will not bar approval of a State selection. The State may challenge such a classification or elect to take the land with the mineral reservation.

[2] However, even where a State consents to the mineral reservation, a further determination is required. As 43 CFR 2093.0-3

provides, there is discretion in the Secretary of the Interior to allow the nonmineral application with a reservation of the minerals or to reject it if the condition set forth in that regulation is not met; namely, that the application will be allowed "only if it is determined by the proper officer, with the concurrence of the Director, Geological Survey, that the disposal of the lands under the nonmineral application will not unreasonably interfere with current or contemplated operations under the Mineral Leasing Acts."

If there is such a determination that disposal of surface rights would interfere unreasonably with the development of the leasable mineral(s) and a proper basis in the record, unrefuted by an appellant, a State selection application is properly rejected. State of California, A-27805 (February 19, 1959). In the case before us, however, there is no analysis or other substantiation in the record to serve as support for the determination. The State has asserted that the determination is wrong.

Accordingly, this case is remanded to the BLM State Office in Utah to consider further, with the Geological Survey, whether or not disposal of the lands to the State will unreasonably interfere with current or contemplated operations under the Mineral Leasing Acts. We agree with the State that information about proposed operations under the existing coal lease would be relevant and helpful, but not necessarily controlling, in making the determination. Information submitted by the State should also be considered. If, upon further consideration, it is determined that unreasonable interference with current or contemplated operations under the Mineral Leasing Acts would result if the selection application is approved, any future decision to that effect should be substantiated in the record with sufficient data so that review of the decision may be made on an informed basis.

We note that coal lands are also affected by the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C.A. § 1201 et seq. (West Supp. 1978). Section 714 of that Act, 30 U.S.C. § 1304 (West Supp. 1978), affords protection to surface owners where coal owned by the United States is to be mined by methods other than underground mining techniques. The effect of this Act, if any, upon the case at bar, should also be considered.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the

decision appealed from is set aside and remanded for reconsideration consistent with this decision.

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Joan B. Thompson
Administrative Judge

We concur:

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Anne Poindexter Lewis
Administrative Judge

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Frederick Fishman
Administrative Judge